

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	Case No. 1D 2002 63023
)	
JOHN HENRY MORTIMER)	OAH No. L2003030762
460 Kelsford)	
Las Vegas, Nevada 89123)	
)	
Physical Therapist Assistant License)	
No. AT 585)	
)	
Respondent.)	
_____)	

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Physical Therapy Board as its Decision in the above-entitled matter.

This Decision shall become effective April 12, 2004.

IT IS SO ORDERED March 11, 2004 .

PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY: Original Signed By: _____

Donald A. Chu, PhD, PT, President

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PROPOSED DECISION

The hearing in the above-captioned matter was held on January 14, 2004, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. Complainant was represented by Vladimir Shalkevich, Deputy Attorney General. Respondent did not appear, but was represented by his attorney, Mr. Richard C. Loy.

Evidence was received, the matter argued, and the case was submitted for decision on the hearing date.

The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows:

FACTUAL FINDINGS

1. Complainant Steven K. Hartzell filed the accusation in the above-captioned matter while acting in his official capacity as Executive Officer of the Physical Therapy Board of California (“the Board”), Department of Consumer Affairs.

2. Respondent John Henry Mortimer has been licensed as a physical therapist assistant by the Board since August 12, 1981. His license, number AT 585, is due to expire in July 2004 unless otherwise renewed.

3. After being served with the accusation Respondent filed a written notice of defense. However, despite notice, he failed to appear personally in this matter, though his attorney appeared and defended the case on his behalf.

4. On January 4, 2001, Respondent was convicted of grand theft of personal property in violation of Penal Code section 487(a). His conviction entered on his plea of guilty in the case *People v. John Henry Mortimer*, in the Superior Court of California, County of Ventura, number 2000103864 MA, and the conviction was for a misdemeanor.

5. The court suspended imposition of sentence and he was conditionally released for three years—placed on probation—subject to terms and conditions which included a term of fifteen days in the County Jail, with work release approval. He was ordered to pay fines and penalties, and other terms common to probation grants were imposed.

6. Essentially, Respondent had participated in a scheme to defraud the Area Housing Authority of Ventura County in connection with a subsidized housing, or Section 8 program. His mother had owned a house in that county and rented the house to her daughter Jeanine. The Housing Authority agreed to supplement the daughter's rent by paying money to her mother. When that relationship had been ongoing for a time, the mother passed away, in December 1996, but nobody from the Mortimer family told the Housing Authority. Meanwhile, between December 1996 and August 1997 Respondent received the subsidy checks and negotiated them. He indicated on the checks that they were deposited to a living trust, which he knew was invalid by approximately March 1997. There was evidence that in furtherance of the scheme Respondent forged a deed from his mother. The monies obtained from the housing authority were approximately \$1,100 per month, and totaled nearly \$10,000.

7. Respondent's crime was a crime of moral turpitude, per se, and substantially related to the duties, qualifications, and functions of a physical therapist.

8. Respondent has no prior criminal record, and there is no evidence of prior discipline by the Board. However, no evidence of rehabilitation was presented, although it may be inferred from the record that Respondent is in compliance with his criminal probation, which should have expired by the hearing date.

9. The Board has incurred costs in the investigation and prosecution of this matter, and the reasonable amount of those costs is \$4,950.00.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter was established pursuant to sections 490, 2609, and 2660 of the Business and Professions Code (“the Code”), based on Factual Findings 1 through 3.

2. Cause to discipline Respondent’s license to act as a physical therapist has been established pursuant to Code section 2660(d), for his conviction of a crime of moral turpitude, substantially related to the duties, qualifications and functions of a physical therapist, based on Factual Findings 4 through 7.

3. The Board is entitled to recover its costs of investigation and prosecution, pursuant to Code section 2661.5(a), based on Legal Conclusions 1 and 2, and their factual predicates. The reasonable amount of those costs is \$4,950.00 based on Factual Finding 9.

4. There is no evidence in mitigation, and no direct evidence of rehabilitation, based on Factual Finding 8.

5. Under all the facts and circumstances, Respondent’s license should be revoked.

Discussion and Rationale:¹

The fact of Respondent’s conviction is indisputable, and as a matter of law theft crimes are crimes of moral turpitude. (*E.g., In Re Rothrock* (1944) 25 Cal. 2d. 588.) Such crimes are related to the duties and qualifications of a professional, including a physical therapist, because the public must rely on the honesty and integrity of those licensees. For example, those who provide payment for medical benefits, such as government programs or private insurers, must be able to trust that the bills received from therapists are accurate, and not tainted by dishonesty or fraud. Other health care professionals must trust to the integrity of therapists and the reports they issue.

Respondent’s attorney, saddled with the chore of trying to defend his absent client, rightly argued that there had never been any hint of dishonesty in Respondent’s practice. Certainly he has no record of discipline. However, Respondent’s efforts to collect a few thousand dollars after he had reason to know that they could not be received, is a matter that can not be ignored.² While mitigating facts may have led to the plea agreement in the criminal case, such were not available for the undersigned to consider, nor was there any evidence of rehabilitation that might have been considered, and which might, perhaps, have saved Respondent’s license. However, on the record in this case his license must be revoked.

ORDER

¹ The section that follows is within the ambit of Government Code section 11425.50(d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

² That is, even if Respondent had some reason that his mother’s trust could collect rent on the contract that had existed between his mother and sister, by March of 1997 he knew the trust was invalid. His continued negotiation of check to an invalid trust indicates he knew he was engaged in an improper activity.

1. The physical therapist assistant's license issued to Respondent John Henry Mortimer, number AT 585, is hereby revoked.

2. Respondent shall reimburse the Board its costs in the amount of \$5,950.00 within ninety days of the effective date of this decision.

February 13, 2004

Original Signed By:
Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings